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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,976	07/12/2001	Arthur Ernest Conrad	01424-P0037B	9444
24126 7590 06/26/2008 ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			EXAMINER BOVEJA, NAMRATA	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 06/26/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/903,976		CONRAD ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	NAMRATA BOVEJA		3622	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This office action is in response to communication filed on 04/29/2008.
2. Claims 1-44 are presented for examination.
3. Applicant's request to reopen prosecution has been entered.
4. The new ground of rejection entered by the Board of Patent Appeals and Interferences on February 29, 2008 has been maintained, and an alternative ground of rejection has also been added.
5. The 37 CFR 1.131 Affidavit of Joseph F. Culano has been considered and addressed.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4, 6, 8-12, 14, 16, 18-24, 26, 28, 30-34, 36, 38, and 40-44 are rejected under U.S.C. 103(a) as being unpatentable over Gerszberg et al. Patent Number 6,084,583 (hereinafter Gerszberg) in view of Cho et al. Patent Number 6,834,048 (hereinafter Cho).

In reference to claims 1, 11, 21, 22, 23, 33, 43, and 44, all of the independent claims have substantially the same limitations, and Gerszberg discloses a method and system for displaying a web content on a display of a user computer, said system

comprising: a central computer (col. 6 lines 36-48 and Fig. 4A); software executing on said central computer for receiving a request to transmit a web page (Gerszberg describes receiving a request to transmit content to a phone (col. 9 lines 8-11); Cho describes using a web page for phone service and VOIP (col. 2 lines 33-61)), software executing on said central computer for transmitting a web page to the user computer in response to the request to transmit a web page, (col. 8 lines 26-29) the web page comprising attract loop code, wherein the attract loop code monitors the user computer for a user event, and only if the user event does not occur within a specified time period, the attract loop code automatically transmits a request for attract loop content to said central computer (col. 8 lines 43-65 and Fig. 6) software executing on said central computer for automatically transmitting attract loop content to the user computer in response to the request for attract loop content; and (col. 8 lines 43-65 and Fig. 6) wherein the attract loop code causes the attract loop content to be displayed on the display of the user computer (col. 8 lines 43-65 and Fig. 6).

Basically, Gerszberg describes all of the limitations of claim 1, and in particular, a screen saver, including the details of the programming logic that both monitors for activity and displays content only if such activity is not provided within a specific period of time (col. 8 lines 43-65 and Fig. 6) and having the client call for screen saver content from the server (col. 9 lines 8-11), except for the transmission of a web page.

Gerszberg's transmission may be internet content, which would suggest web content. Cho demonstrates that Gerszberg's videophone may be a computer using VOIP with web pages. Thus, Gerszberg's screensaver on Cho's VOIP videophone would use web

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pages for its downloaded content to be compatible with Cho's web pages. It would have been obvious to a person of ordinary skill in the art to have applied Gerszberg's videophone within Cho's VOIP context because of Cho's taught application to phone service.

7. In reference to claims 2, 12, 24, and 34, Gerszberg discloses the method and system wherein the attract loop code, while the attract loop content is being displayed on the display of the user computer, monitors the user computer for a user event, and, upon the occurrence of the user event, automatically causes the display of the attract loop content to be terminated (col. 8 lines 39-42, col. 9 lines 21-24 and 40-42).

8. In reference to claims 4, 14, 26, and 36, Gerszberg discloses the method wherein the attract loop content is displayed in a browser window (i.e. a program that accesses and displays files and other data available on the Internet and other networks) (col. 5 lines 51-60, col. 6 lines 20-35, col. 8 lines 43 to col. 9 lines 57).

9. In reference to claims 6, 16, 28, and 38, Gerszberg discloses the method wherein the wherein the attract loop content is displayed in a browser window which was automatically opened by the attract loop code (col. 8 lines 43-65 and Fig. 6).

10. In reference to claims 8, 18, 30, and 40, Gerszberg discloses the method wherein the user event is selected from the group consisting of manipulation of an input device, movement of a mouse, typing on a keyboard, access of a storage device, and combinations of these col. 8 lines 33-39).

11. In reference to claims 9, 19, 31, and 41, Gerszberg discloses the method wherein the attract loop content comprises media selected from the group consisting of

text, graphics, animation, sound, video, multimedia, and combinations of these (col. 6 lines 20-35, col. 8 lines 51-57, and Figures 3A and 8).

12. In reference to claims 10, 20, 32, and 42, Gerszberg discloses the method wherein the attract loop content relates to subject matter selected from the group consisting of advertisement, entertainment, education, and combinations of these (col. 8 lines 51-65 and Figure 8).

13. Claims 3, 5, 13, 15, 25, 27, 35, and 37 are rejected under U.S.C. 103(a) as being unpatentable over Gerszberg in view of Cho and further in view of Park et al (6,295,061 hereinafter Park).

In reference to claims 3, 13, 25, and 35, Gerszberg does not disclose the method wherein the central computer comprises a web server. Park discloses the method wherein the central computer comprises a web server (i.e. a server that serves web sites to the client computer) (col. 5 lines 26-58, col. 6 lines 25-27, col. 8 lines 20-24, and Figures 5 and 6). It would have been obvious to modify Gerszberg to include the method wherein the central computer comprises a web server to enable the transmission of an entire webpage instead of a specific advertisement to be used as a screen saver, since video phones and PDA devices are capable of displaying web pages similar to computers.

14. In reference to claims 5, 15, 27, and 37, Gerszberg does not specifically disclose the method wherein the attract loop content is displayed in a browser window in full screen mode. Park inherently discloses the method wherein the attract loop content is displayed in a browser window in full screen mode (since, the option to display a

browser window in full screen mode is automatically presented as a feature of the browser itself, for example in Internet Explorer, under the View menu on the toolbar, there is an option to display a full screen mode, and Park teaches the invention using the Internet Explorer web browser, and therefore the full screen mode option is positively present in Park's disclosed invention) (col. 5 lines 49-58, col. 7 lines 12-13 and 49-57, col. 8 lines 20-24, col. 9 lines 18-19 and 35-37, col. 10 lines 24-26, col. 11 lines 29-31, and Figures 6-15). It would have been obvious to modify Gerszberg to include the method wherein the attract loop content is displayed in a browser window in full screen mode to enable the user to view content in a larger text/image size on the full length of the screen.

15. Claims 7, 17, 29, and 39 are rejected under U.S.C. 103(a) as being unpatentable over Gerszberg in view of Cho and further in view of the article titled "An Internet newcomer is making money by selling moving ads as part of screen savers" written by David Barboza for the New York Times on October 1, 1996 on page D.7 (hereinafter Barboza).

In reference to claims 7, 17, 29, and 39 Gerszberg teaches the method wherein the attract loop code is received and displayed (col. 8 lines 43-65 and Fig. 6).

Gerszberg is silent about teaching the method that automatically causes the attract loop content to be continually updated. Barboza teaches the method that automatically causes the attract loop content to be continually updated (page 1 lines 1-4 and 7-9, page 2 lines 15-17, 26-28, and 31-33). It would have been obvious to modify Gerszberg to include the method that automatically causes the attract loop content to be

continually updated to gain access to up to date advertising content to be presented to the users. Further, it would make sense to have continually updated content, since users would not want to see the same advertisements over and over again, and repeated advertisements will also not benefit the advertiser as the viewers will no longer be interested in viewing the repeated advertisements.

16. Claims 1, 2, 4, 6, 8-12, 14, 16, 18-24, 26, 28, 30-34, 36, 38, and 40-44 are rejected under U.S.C. 103(a) as being unpatentable over Gerszberg et al. Patent Number 6,084,583 (hereinafter Gerszberg) in view of Pardo Patent Number 6,266,539 (hereinafter Pardo).

In reference to claims 1, 11, 21, 22, 23, 33, 43, and 44, all of the independent claims have substantially the same limitations, and Gerszberg discloses a method and system for displaying a web content on a display of a user computer, said system comprising: a central computer (col. 6 lines 36-48 and Fig. 4A); software executing on said central computer for receiving a request to transmit a web page (Gerszberg describes receiving a request to transmit content to a phone (col. 9 lines 8-11); Pardo describes using a web page for phone service and VOIP (abstract, col. 6 lines 51-56, and col. 9 lines 2-20)), software executing on said central computer for transmitting a web page to the user computer in response to the request to transmit a web page, (col. 8 lines 26-29) the web page comprising attract loop code, wherein the attract loop code monitors the user computer for a user event, and only if the user event does not occur within a specified time period, the attract loop code automatically transmits a request for attract loop content to said central computer (col. 8 lines 43-65 and Fig. 6) software



executing on said central computer for automatically transmitting attract loop content to the user computer in response to the request for attract loop content; and (col. 8 lines 43-65 and Fig. 6) wherein the attract loop code causes the attract loop content to be displayed on the display of the user computer (col. 8 lines 43-65 and Fig. 6).

Basically, Gerszberg describes all of the limitations of claim 1, and in particular, a screen saver, including the details of the programming logic that both monitors for activity and displays content only if such activity is not provided within a specific period of time (col. 8 lines 43-65 and Fig. 6) and having the client call for screen saver content from the server (col. 9 lines 8-11), except for the transmission of a web page.

Gerszberg's transmission may be internet content, which would suggest web content. Pardo demonstrates that Gerszberg's videophone may be a computer using VOIP with web pages. Thus, Gerszberg's screensaver on Pardo's VOIP PDA phone would use web pages for its downloaded content to be compatible with Pardo's web pages. It would have been obvious to a person of ordinary skill in the art to have applied Gerszberg's videophone within Pardo's VOIP context because of Pardo's taught application to phone service.

17. In reference to claims 2, 12, 24, and 34, Gerszberg discloses the method and system wherein the attract loop code, while the attract loop content is being displayed on the display of the user computer, monitors the user computer for a user event, and, upon the occurrence of the user event, automatically causes the display of the attract loop content to be terminated (col. 8 lines 39-42, col. 9 lines 21-24 and 40-42).

18. In reference to claims 4, 14, 26, and 36, Gerszberg discloses the method wherein the attract loop content is displayed in a browser window (i.e. a program that accesses and displays files and other data available on the Internet and other networks) (col. 5 lines 51-60, col. 6 lines 20-35, col. 8 lines 43 to col. 9 lines 57).

19. In reference to claims 6, 16, 28, and 38, Gerszberg discloses the method wherein the wherein the attract loop content is displayed in a browser window which was automatically opened by the attract loop code (col. 8 lines 43-65 and Fig. 6).

20. In reference to claims 8, 18, 30, and 40, Gerszberg discloses the method wherein the user event is selected from the group consisting of manipulation of an input device, movement of a mouse, typing on a keyboard, access of a storage device, and combinations of these col. 8 lines 33-39).

21. In reference to claims 9, 19, 31, and 41, Gerszberg discloses the method wherein the attract loop content comprises media selected from the group consisting of text, graphics, animation, sound, video, multimedia, and combinations of these (col. 6 lines 20-35, col. 8 lines 51-57, and Figures 3A and 8).

22. In reference to claims 10, 20, 32, and 42, Gerszberg discloses the method wherein the attract loop content relates to subject matter selected from the group consisting of advertisement, entertainment, education, and combinations of these (col. 8 lines 51-65 and Figure 8).

23. Claims 3, 5, 13, 15, 25, 27, 35, and 37 are rejected under U.S.C. 103(a) as being unpatentable over Gerszberg in view of Pardo and further in view of Park et al (6,295,061 hereinafter Park).

In reference to claims 3, 13, 25, and 35, Gerszberg does not disclose the method wherein the central computer comprises a web server. Park discloses the method wherein the central computer comprises a web server (i.e. a server that serves web sites to the client computer) (col. 5 lines 26-58, col. 6 lines 25-27, col. 8 lines 20-24, and Figures 5 and 6). It would have been obvious to modify Gerszberg to include the method wherein the central computer comprises a web server to enable the transmission of an entire webpage instead of a specific advertisement to be used as a screen saver, since video phones and PDA devices are capable of displaying web pages similar to computers.

26. In reference to claims 5, 15, 27, and 37, Gerszberg does not specifically disclose the method wherein the attract loop content is displayed in a browser window in full screen mode. Park inherently discloses the method wherein the attract loop content is displayed in a browser window in full screen mode (since, the option to display a browser window in full screen mode is automatically presented as a feature of the browser itself, for example in Internet Explorer, under the View menu on the toolbar, there is an option to display a full screen mode, and Park teaches the invention using the Internet Explorer web browser, and therefore the full screen mode option is positively present in Park's disclosed invention) (col. 5 lines 49-58, col. 7 lines 12-13 and 49-57, col. 8 lines 20-24, col. 9 lines 18-19 and 35-37, col. 10 lines 24-26, col. 11 lines 29-31, and Figures 6-15). It would have been obvious to modify Gerszberg to include the method wherein the attract loop content is displayed in a browser window in

full screen mode to enable the user to view content in a larger text/image size on the full length of the screen.

27. Claims 7, 17, 29, and 39 are rejected under U.S.C. 103(a) as being unpatentable over Gerszberg in view of Pardo and further in view of the article titled "An Internet newcomer is making money by selling moving ads as part of screen savers" written by David Barboza for the New York Times on October 1, 1996 on page D.7 (hereinafter Barboza).

In reference to claims 7, 17, 29, and 39 Gerszberg teaches the method wherein the attract loop code is received and displayed (col. 8 lines 43-65 and Fig. 6).

Gerszberg is silent about teaching the method that automatically causes the attract loop content to be continually updated. Barboza teaches the method that automatically causes the attract loop content to be continually updated (page 1 lines 1-4 and 7-9, page 2 lines 15-17, 26-28, and 31-33). It would have been obvious to modify Gerszberg to include the method that automatically causes the attract loop content to be continually updated to gain access to up to date advertising content to be presented to the users. Further, it would make sense to have continually updated content, since users would not want to see the same advertisements over and over again, and repeated advertisements will also not benefit the advertiser as the viewers will no longer be interested in viewing the repeated advertisements.

### **Response to Arguments**

28. The "Declaration of Joseph F. Culano Under 37 CFR 1.131" filed 29 April 2008 is insufficient to overcome the rejection of claims 1-44 based upon 35 U.S.C. 103 (a) as

being unpatentable over Gerszberg et al. (U.S. Patent No. 6,084,583) in view of Cho et al. (U.S. Patent No. 6,834,048) and further in view of Park (U.S. Patent No. 6,295,061) and the article titled "An Internet newcomer is making money by selling moving ads as part of screen savers" written by David Barboza for the New York Times on October 1, 1996 on page D.7 because:

While the Applicant states that the declaration shows a documented use of present invention, Applicant has not offered any proof of this assertion. The Affidavit is merely a project requirements documents, and upon review of the document and specifically pages 16 and 67, while it is mentioned that an attract loop can be built, and a web page can be used as the attract loop, there is no disclosure of the "ONLY IF" feature claimed by the Applicant in the independent claims. Specifically, the affidavit does not disclose that the screen saver comes on only if there is no activity by a user for a predefined amount of time. Hence the Applicant has not offered any proof showing that they conceived the "ONLY IF" part of the claim prior to the filing date of the reference. Furthermore, the affidavit does not show possession of the invention by the Applicant.

Although factual evidence is preferable to opinion testimony, such testimony is entitled to consideration and some weight so long as the opinion is not on the ultimate legal conclusion at issue. While an opinion as to a legal conclusion is not entitled to any weight, the underlying basis for the opinion may be persuasive. In re Chilowsky, 306 F.2d 908, 134 USPQ 515 (CCPA 1962) (expert opinion that an application meets the requirements of 35 U.S.C. 112 is not entitled to any weight; however, facts supporting a

basis for deciding that the specification complies with 35 U.S.C. 112 are entitled to some weight). Although an affidavit or declaration, which states only conclusions, may have some probative value, such an affidavit or declaration may have little weight when considered in light of all the evidence of record in the application. In re Brandstadter, 484 F.2d 1395, 179 USPQ 286 (CCPA 1973). See MPEP § 716.01(c).

MPEP 716.01 (a) requires objective evidence and proof of secondary considerations facts for the evidence to be of probative value. The affidavit does not provide such objective evidence or proof of secondary considerations facts.

Per MPEP 716.01(b) a nexus is required between the merits of the claims and the evidence of secondary considerations. Here, the full scope or breadth of the claim language is not covered by the affidavit. The Affidavit seems to track the problem solved of having virtual meetings instead of the claim language pertaining to advertising screen savers.

MPEP 716.01(d) requires consideration in light of the full record. Regrettably, the submitted affidavit does not overcome the facts of the prima facie case and is unpersuasive to rebut the prima facie case of obviousness.

29. In reference to the Applicant's argument that the provisional application number 60/217,800 filed on July 12, 2000 overcomes the effective date of the Cho et al. reference of September 22, 2000, the Examiner respectfully disagrees with the Applicant. Specifically, upon review of the one page provisional application, in the summary of the invention section, the Applicant recites the detection of an idle period of predetermined duration and automatic display of a web attract loop upon such

detection. While one definition of the word idle is inactive, another definition of the word per [www.dictionary.com](http://www.dictionary.com) is slow. So, idle does not just mean only if there is no activity, and the Applicant did not make use of the only if terminology in the provisional application. However, the Applicant does have support for such a limitation in the specification of the regular application on page 5 paragraph 12, where it is recited "the web page includes attract loop code which monitors the user computer for a user event, and if the user event does not occur within a specified time period, the attract loop code automatically transmits a request for attract loop content to the central computer." So, the only if claim language was not fully supported by the provisional application.

Note however that for the sake of argument the Examiner has made an additional alternative rejection in this case by substituting the Pardo Patent Number 6,266,539 in lieu of the Cho et al. Patent Number 6,834,048 which has a filing date of June 12, 1998 that clearly meets the prior art date requirements of the provisional application and the affidavit.

30. After careful review of Applicant's remarks/arguments filed on 04/29/2008, the Applicant's arguments with respect to claims 1-44 are presented for examination and have been fully considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Namrata (Pinky) Boveja whose telephone number is 571-272-8105. The examiner can normally be reached on Mon-Fri, 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the

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examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The **Central FAX** phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 1866-217-9197 (toll-free).

/N. B./

Examiner, Art Unit 3622

June 26, 2008

/Raquel Alvarez/

Primary Examiner, Art Unit 3688